

Receipt number AUSFCC-5780898

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

DOE NO. 1,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Docket No. 19-1747C

COMPLAINT

1. This is a civil action brought by Plaintiff who is an employee of the defendant United States of America (“Defendant”), in its Department of Justice, Federal Bureau of Investigation (“FBI”). Plaintiff is employed as an Intelligence Analyst (“IA”) in occupational series GS-0132. In 2018, Plaintiff participated in the FBI Basic Field Training Course (“BFTC”) but did not receive overtime pay for her overtime hours worked. At the time of attendance, Plaintiff was correctly classified by the FBI as non-exempt under the Fair Labor Standards Act, of 1938, as amended, 29 U.S.C. § 201, *et seq.*, (“FLSA”). Thus, Plaintiff should have received overtime pay for hours worked in excess of 40 per week or eight per day. Plaintiff brings this case on behalf of themselves and all others similarly situated.¹ Plaintiff seeks to recover from Defendant back pay, liquidated damages, interest, attorneys’ fees, and costs pursuant to the Fair Labor Standards Act, 5 U.S.C. § 5596, and other applicable laws.

¹ We refer to Plaintiff with the pronouns “they” and “their” to avoid disclosing the Plaintiff’s gender.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this civil action pursuant to 5 U.S.C. § 5596, 28 U.S.C. §§ 1346(a)(2), 1491, and 29 U.S.C. § 216(b).

3. Further, this Court has jurisdiction under 28 U.S.C. §§ 2201 and 2202 to issue declaratory judgments and other relief sought herein in that actual controversies exist between Plaintiff and Defendant regarding actions and failures to act by Defendant under the FLSA and otherwise.

THE PARTIES

4. Plaintiff is an employee of Defendant within the meaning of 29 U.S.C. § 203(e), and within the meaning of Title 5 of the U.S. Code, specifically, 5 U.S.C. §§ 2105, 5541.

5. Plaintiff and others similarly situated are or have been employed by Defendant during periods from 2016 to date.

6. Plaintiff, and others similarly situated, desire anonymity in connection with their participation in this litigation, and seek to litigate this case partially under seal, in light of the sensitive nature of the duties they perform for Defendant, and the need for their identities not to be disclosed and made public in this litigation, or otherwise, as is more fully set forth in Plaintiff's Motion for a Protective Order and to Permit Plaintiff and Putative Class Members to File Their Claims Anonymously, which is being filed on Plaintiff's behalf in this Court simultaneously herewith.

7. Defendant and its involved agency is, and at all material times has been, a "public agency" and "employer" within the meaning of the FLSA, 29 U.S.C. § 203(d) and § 203(x), and an executive agency within the meaning of 5 U.S.C. §§ 105, 5541, 5596.

GENERAL ALLEGATIONS

8. Plaintiff is employed by Defendant as a GS-09 Intelligence Analyst in occupational series GS-0132.

9. Plaintiff participated in the FBI Basic Field Training Course (BFTC) from January 7, 2018 through April 4, 2018 at the FBI Training Academy in Quantico, Virginia.

10. At the time of this attendance, Plaintiff was correctly classified by Defendant as non-exempt from the FLSA.

11. The FBI requires all IAs and other FBI personnel to complete BFTC. The purpose of BFTC is to improve the job performance of IAs and other attendees.

12. Accordingly, BFTC is directly related to Plaintiff's employment.

13. Prior to entering BFTC, Plaintiff and other IAs were not informed by the Agency that the course would require them to work late and on weekends.

14. In addition to attending training sessions, BFTC attendees are required to study materials, work on team projects, write reports and other training documents, prepare briefings, and prepare for and perform interviews.

15. This coursework is integral to BFTC and its completion is necessary in order to successfully complete BFTC.

16. All coursework is mandatory, supervised, and graded, and required to be performed on the grounds of the FBI Training Academy in Quantico, Virginia.

17. Plaintiff regularly worked beyond 8 hours each day and/or 40 hours per week in order to complete the mandatory coursework.

18. Plaintiff is FLSA non-exempt and is therefore entitled to FLSA overtime pay for all hours worked in excess of 8 hours each day and/or 40 hours in a workweek.

19. BFTC trainers originally told Plaintiff that they would receive overtime for hours worked while taking the course. However, after Plaintiff completed overtime hours during the first week at BFTC, the trainers told Plaintiff that they were not permitted to submit all of the hours worked for overtime compensation, and instead that Plaintiff must submit certain hours as comp time and that other hours would not be compensated.

20. The Agency refused to pay Plaintiff for all overtime hours worked.

21. Defendant and its officers and agencies are responsible under the United States Constitution, federal law, and regulations for the establishment and administration of personnel, employment, and compensation policies and practices and for applying to Plaintiff the provisions of the FLSA and other applicable federal pay and compensation statutes and regulations.

22. Defendant and its officers and agencies willfully have violated, and continue willfully to violate, the provisions of the FLSA by wrongfully and willfully failing and refusing to provide the Plaintiff and others similarly situated with pay and benefits due to them under the FLSA and its implementing regulations.

COLLECTIVE ACTION ALLEGATIONS

23. Plaintiff brings this action on behalf of themselves and all others similarly situated (“the Class”), which is defined as follows: all FBI employees who attended BFTC between 2016 and the present and who were classified by the FBI as FLSA non-exempt at the time of such attendance.

24. Defendant failed to pay members of the Class all overtime due to them for their work during BFTC. As a result, these employees received overtime pay at a rate less than they are due under the FLSA, for working in excess of 8 hours each day and/or 40 hours each week.

25. These employees suffered the same legal violation under the same factual circumstances, attributable to Defendant, and seek the same remedies.

26. A collective action would be the most efficient way to resolve their FLSA overtime claims, which involve the same questions of law and fact.

27. Defendant has the capacity to communicate with these employees, *e.g.*, through their government email addresses, for the purposes of providing notice of the collective action.

COUNT ONE
(Failure to Properly Compensate Plaintiff for Overtime under FLSA)

28. Plaintiff incorporates by reference herein the allegations contained in each of the above paragraphs.

29. Defendant wrongfully and willfully withheld overtime compensation due Plaintiff and all other members of the Class by failing and refusing to pay them in accordance with FLSA for hours worked in excess of 8 hours per day and/or 40 hours per week during their attendance at the BFTC.

COUNT TWO
(Request for Back Pay, Liquidated Damages, Interest, Attorneys' Fees and Costs)

30. Plaintiff incorporates by reference herein the allegations contained in each of the above paragraphs.

31. As a result of the wrongful and willful violations of law by Defendant and its officers and agents as alleged in the claims specified above, there is due and owing to Plaintiff and all other members of the Class various amounts of back pay, liquidated damages, interest, attorneys' fees and costs.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

- a) Certify this case as a collective action and require Defendant to issue notice of this action to all members of the Class; and
- b) Award Plaintiff and all other Class members such back pay, premium pay, liquidated damages, and interest under the Back Pay Act from the date of the denial of such pay and entitlements until a date not more than 30 days before the date on which the judgment herein is paid, and costs, as are due and owing to them by Defendant under applicable federal laws and regulations for overtime worked during their attendance at the BFTC; and
- c) Order Defendant, subject to rules and regulations to be established by this Court which conform with the FLSA, to conduct a full, complete and accurate accounting of all back overtime wages, interest, and liquidated damages due and owing to Plaintiff and others similarly situated as a result of their being denied overtime pay during their attendance at the BFTC; and
- d) Award Plaintiff reasonable attorneys' fees and costs to be paid by Defendant under the FLSA, the Back Pay Act, 5 U.S.C. § 5596, and the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(B); and
- e) Issue a call upon Defendant pursuant to 28 U.S.C. § 2507, requiring the production of information or papers of Defendant establishing Defendant's liability herein; and
- f) Grant any such other relief as the Court deems just and proper.

Respectfully submitted,

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Dated: November 11, 2019

CERTIFICATE OF SERVICE

Pursuant to the Rule 4 of the United States Court of Federal Claims, service of this complaint on Defendant United States of America will be effectuated by the clerk of the court.

/s/ Daniel M. Rosenthal